

JEFFERSON COUNTY COMMISSIONERS
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KEN WEBER, CHAIR

CHUCK NOTBOHM

TOM LYTHGOE

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
April 29, 2008**

Present: Commissioners Lythgoe and Weber; Mike Hoffman, County Planner; Joe Carter, Road Supervisor; Debbie Rennie, Justice Court; Matt Johnson, County Attorney; Dennis Lay, Rob Myers

Absent: Commissioner Notbohm

CALENDAR REVIEW

- 4/30 Meeting with John Bowe regarding DNRC grant - 2:00
Community Development Board - Whitehall - 7:00
- 5/01 Meeting with Dave Schultz and Andrea Sarchet - Virginia City - 1:00
Blue Sky Heights Water Users Association - 7:00
- 5/02 Boulder Chamber dinner - Jefferson City - 6:00

COMMISSION REPORTS

GOVERNOR'S EMERGENCY PREPAREDNESS CONFERENCE

Commissioner Weber reported that he attended the governor's emergency preparedness conference in Billings the past week. He also attended an emergency response retreat at the end of the week. There were some really good conversations about how Montana can be responsive to natural and human-caused disasters. The Interoperability retreat covered consortiums that have been formed. It is a difficult challenge to get all the Indian tribes, counties, fire, etc., on the same radios and frequency.

MEETING WITH MARK REY

Commissioner Weber reported that he attended a meeting in Missoula with Mark Rey, Undersecretary of the Department of Interior on Monday. Plum Creek is no longer focusing on logging, but is now in development of their lands. The Forest Service has negotiated some amendments to the easements that were granted from the 1940s to the 1960s. This will give the US government some indemnity and also provide clearer language as they develop and become subdivisions, there is some language in the easements that makes it a little harder for them. Missoula county and city are probably the most upset and affected, because over 50% of their

privately held land is owned by Plum Creek and they had no visions of Plum Creek ever subdividing. They have been working on zoning to keep those areas as wild lands. They feel that Plum Creek went behind their back to go to Mark Rey, and that Mary Rey also went behind their back in these negotiations.

Commissioner Weber stated that he brought up right-of-ways and RS2477 issues. He was assured again that the Forest Service is going to work with us to get these issues settled. If we feel that the local Forest Service is not being cooperative, we can contact him directly. He stated that it was a good meeting, and he learned a lot about where some of these other issues are coming from. Commissioner Weber stated that one thing he suggested was that it could be put into the amendments that all of the right-of-ways could be considered Schedule A agreements, and the Forest Service would retain the responsibility of maintaining those rights-of-way. Mark Rey agreed that he would consider that.

ZONING COMMISSION

Commissioner Lythgoe reported that he attended the zoning commission meeting on Thursday night. All had assignments to complete, to review zoning definitions in the zoning documents.

CENTER FOR MENTAL HEALTH

Commissioner Lythgoe reported that he attended the Center for Mental Health governing board meeting in Great Falls the previous day.

ELECTED OFFICIAL/DEPARTMENT HEAD CONCERNS

Commissioner Weber stated that in signing claims that morning, they missed two claims. The claims were approved and signed.

Joe Carter, Road Supervisor, stated that he has three bills from Great West regarding the Bernice restoration plan. Joe said that it is not in his budget to pay. Commissioner Weber asked if he had anything in his budget to pay part of it. Joe stated that he has \$10,968 in his engineering budget. Commissioner Weber asked for the total of the bills. Joe said that these three total \$25,429.53. Commissioner Lythgoe stated that we also will be doing the work on that project, so we will need to find some money for that, as well as the Ridgeview project. We will have to come up with some money for both of these projects. It is the end of the year, and we may want to talk to Bonnie regarding options. It would be a good idea to come up with some estimates for these projects. There may be some monies in professional services in other departments that we may be able to pull from. We may have it within the budget to pull from, rather than using PILT. He suggested that Joe sit down with Bonnie to see what can be done. Commissioner Weber stated that it is his understanding that the original report to the EPA did not include site 5, and they have indicated that if we did not address it, they would write us up and make us address it. He asked if that is included in these invoices. Joe stated that it is not. He thinks that the hydrologist was going to go back up there the previous day. He and Jeremiah think that we will be okay on that site.

Joe said that after the meeting this morning, he made some calls to get some estimates for the water tank project in Montana City. He will be setting up an on-site meeting with the principal players, and will let the Commissioners know when it is.

Matt stated that he wanted to give notice that he is in the application process for a National Guard JAG position. He will be required to be out of the office for a period of time for training, but he will be available by phone and e-mail.

Matt further stated that Joe Schmaus amended his complaint; he will get the information to the Commission. Commissioner Lythgoe asked about Elkhorn Road. Matt stated that they are just waiting for the judge.

SUBDIVISION REVIEW

FINAL PLAT APPROVAL – AMENDED PLAT 5A-1 BLUEBELL MOUNTAIN MINOR SUBDIVISION

Mike Hoffman, County Planner, presented his staff report on this minor subdivision located north of Jefferson City. The parcel contains 11.26 acres, and is proposed to be split into five lots ranging in size from 1.61 to 3.81 acres. The developer has opted for a cash-in-lieu payment to the Jefferson City Rural Fire Department in lieu of a water supply facility. Mike recommended that final plat approval be granted.

Commissioner Lythgoe moved to grant final plat approval. Commissioner Weber seconded. The motion carried.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

ROB MYERS – ENCROACHMENT CONCERNS ON TRAVIS CREEK

Rob Myers stated that he has been making calls and sending letters for two years trying to get this matter resolved. He presented a copy of a letter from the County Attorney's office as well as some pictures. He would like to point out where the facts differ from what is presented in the County Attorney's letter. The letter from the County Attorney states that he is not in a subdivision, which is not correct. He is in the Buffalo Tract subdivision, which originally had at least nine lots. In talking to the Planning Department, he was told that all subdivisions have a 10-foot setback rule regarding building near the property line. He said that is state law, and has something to do with the utility right-of-way. This alone means that Mr. Fabian's wood shed, storage shed and the addition on his house are illegal.

Mr. Myers then referred to the photos he provided. He stated that photo 1 shows his pickup with a horse trailer behind it. The picture also shows the narrowest part of the entire Travis Creek Road from the north fork down, is literally right where he has built his building. It also shows a power pole that is in the county right-of-way to give an idea of where his buildings are. Picture 2 shows where the road used to start widening for a turnout before he built his wood shed on the driving surface. Picture 3 shows the other end of the driving surface, where it butts right up

against the side of his house; that was once a turnout. From where he took the picture, you could see his truck and trailer if the building were removed. Someone can be on that driving surface and he might not be able to see them, but they could see him if the buildings were removed. He noted that the roof of the house addition which hangs over the driving surface of what used to be a turnout. Pictures 4 and 5 show that Mr. Fabian has plenty of flat land where he could have put those buildings.

Mr. Myers stated that Matt has said that he put his drive in the wrong place. However, the plat and his deed clearly show that this is the road provided to his property. It is the same road that Mr. Fabian uses to access the back of his property. This 60-foot road is owned by Ted Schuley, who is trying to sell the 200 acres behind it for a subdivision and is his only access. Commissioner Weber asked if the 60-foot road he is referring to is his driveway. Mr. Myers stated that this is what he uses as his driveway because he has an easement, but it belongs to Ted Schuley. If Matt would have investigated further, he would have found that this road is on very old maps, as it is over 100 years old, and it is also a deeded easement to Sky Top Ranch, as well as Plum Creek. Mr. Fabian should have known that his building would block traffic coming out of that road coming out of Travis Creek. He noted that the wood shed has been there approximately 25 years, and the storage shed and addition to the house 10 to 15 years.

Mr. Myers stated that Matt, through Joe, says that it appears that only one of the buildings is in the way. He stated that this is also incorrect, as at least parts of all three buildings are in the right-of-way. He asked if Joe found pins when he went to talk to Mr. Fabian. Joe said that he found one. Mr. Myers stated that if Joe had measured from the far end of the driveway down 60 feet, he should show Joe that it cuts right through his house. Mr. Myers stated that Mr. Fabian doesn't want them to find the pins. Mr. Myers reiterated that this is a private 60-foot swath of land that Ted Schuley retained ownership of when he did the Buffalo Tracts subdivision. He, and others, have an easement from him to use the road. He stated that if you look at the plat, it shows that it is basically straight. Recently a crew went and trimmed branches 20 feet from the centerline along Travis Creek, to improve sight distance. He noted that Mr. Fabian has three buildings within 20 feet of centerline.

Mr. Myers stated that where the road veers to the right, as shown in one of the pictures, is the narrowest point of the road. He noted that along the rest of the length of the road, wherever there is a hump it is wide enough for three cars to pass, and in some places there is a cut to make it wider. He asked why there isn't a cut on the high side of the area shown in pictures 1 and 2. He stated that this is because there is already a turnout there, but Mr. Fabian has taken it over, using it as his parking space. If he parked in the middle of the road, he would be towed. He contended that the turnout is part of the driving surface. Matt states statute, but he can't find anything that would allow someone to build in the right-of-way without a safety study being done.

Commissioner Notbohm has told him that to get an encroachment permit, it must be reviewed and approved by a Commissioner, and they are usually needed because of physical features of the property. This is not the case for Mr. Fabian, who has plenty of flat areas to build. He stated that if Mr. Fabian had come to them and asked to build a shed in the county's right-of-way, there is no way that he would have gotten approval. Also, Mr. Carter told him that if someone wanted

an encroachment permit, it would cost them \$100-plus per year. He stated that Mr. Fabian has had the wood shed in the right-of-way for 25 years, so he should owe the county over \$1000. Commissioner Weber stated that it is a one-time fee for an encroachment permit.

Mr. Myers went back to Matt's letter and noted that the answer to question #4 is that no one has complained. He is the only person who would be affected, and he has been complaining for two years. He also stated that Joe is partially incorrect in his contention that the hump blocks his sight line; if the buildings were not there, he would be able to see around the hump as he is approaching the right-of-way, and people traveling south would be able to see him approaching. He said that he cannot see how county can allow a landowner to build on county property solely for personal convenience and nothing is done about it. He asked how all this came about. He builds a wood shed on a turnout and the grader operator doesn't say anything, a county deputy drives by, a Commissioner drives by and no one who saw a building in the turnout said anything about it, and no research was done. He stated that this is just apathy.

Mr. Myers stated that he is asking the Commission to order Mr. Fabian to immediately remove the buildings in the right-of-way, remind him that they cannot be placed within 10 feet of the property line, and to order him and his guests to stop parking in the turn out built by the county for public, not private use. This will cause Mr. Fabian minimal hardship and not only help his view of the southbound traffic, but help traffic see him approaching.

He stated that the addition to the house that is on the right-of-way poses another problem. If Joe goes back up there and realizes that it is a turnout, he will understand that no operator or a patrol or plow truck can completely clear the turnout. In essence, his house has narrowed the driving of the turnout, which can't be legal. He noted that all of Mr. Fabian's buildings are located where they are strictly for convenience, not because he didn't have the flat ground to build them on. He stated that if the Commission allows the buildings to stay, they will be allowing him to close a portion of a public road for private use only. He believes that all the facts that he has presented today are truthful, and he asks for a favorable ruling.

Commissioner Weber noted that Mr. Myers has said that the turnout was built by the county, and asked if he had any documentation to prove this. Rob stated that he does not; he doesn't have documentation for any of the turnouts, but said that if you go up there with an open mind, they could see that the whole road has turnouts wherever there is a hump in the road. Commissioner Weber stated that he did go up there and look at the road, and it appeared to him that the hill is the main obstacle to sight distance. They took a truck down the road that he uses as a driveway and tried to figure out what the biggest sight impediment was, and in his mind it was the hill. Rob asked if it wasn't the storage shed that is on the turnout. He noted that Commissioner Weber didn't realize that it was a turnout. Commissioner Weber stated that he saw the turnout. Rob noted that the turnout actually exists through his building and comes out way below it. Commissioner Weber stated that this is something that he didn't know, and thinks that none of us know that. We have no records that it existed that big. Rob stated that it is just common sense. Commissioner Weber stated that common sense doesn't help us.

Commissioner Weber asked about the power pole in the right-of-way, and if he has records for

this. Rob stated that the power company told him that they believe the pole is in the right-of-way, but they have no records.

Commissioner Weber asked Joe if Mr. Fabian has an encroachment permit. Joe stated that he has submitted one, but it has not yet been approved. Rob said that as he stated before, you need to ask in advance and there needs to be a reason to grant a permit. There is no need for one in this case, other than convenience. Commissioner Weber stated that they have routinely done this, for fences or other structures that have been in place for a period of time. Rob stated that the fact that one building is on an actual driving surface doesn't make sense. Joe stated that he would like to argue the fact that this is a driving surface. Rob asked if Joe is stating that a turnout is not a driving surface; if so, why do they plow snow off of them in the winter. Joe stated that they plow the driving lane, not the shoulders and turnout.

Commissioner Weber asked Matt to speak to the law questions. Matt stated that he would like to have Mike in attendance, as he is being quoted. As to whether this is a subdivision or not, he is not sure that the 10 foot rule is accurate, unless it is in the covenants. Commissioner Lythgoe asked if both of the properties are in the subdivision. Rob stated that they are. Commissioner Lythgoe asked how much land Mr. Fabian owns. Rob stated that Mr. Fabian has about 9 acres, and he has about 5 acres. Matt asked if Mr. Fabian is the one who built the sheds. Rob stated that he is.

Matt asked if it is a safety concern. Would like to hear from Commissioners that have been up there, as well as Joe. Commissioner Weber stated that he and Joe went up there and took measurements, from the apparent center of the current driving surface. One building is definitely in the right-of-way. The white shed did not appear to be in the right-of-way, or if it was, only a small amount was. The hill seemed to be the largest impediment to sight distance. Part of the problem is that when you come up the right-of-way that Mr. Myers uses as a driveway, there is an inclination up to our road. As you come up to that, the hill is definitely what blocked their view the worst, in his opinion.

Matt stated that Commissioner Notbohm is being quoted, but he is not here today. In regards to encroachment permits, Jefferson County is in charge of its right-of-ways, and Jefferson County has a policy on encroachment permits. Because someone never obtained a permit 25 years ago, doesn't mean that the Commission is not able to grant one now. If a turnout is part of the road surface is debatable. In his opinion, it is not, it is just extra room that can be used for different reasons. If there is a turnout in this case, it certainly hasn't been used for 25 years, as the building has been there. He has suggested before, and would suggest again, that speed limit signs be placed to help with traffic control. If there is going to be further development up that road, then something will need to be done with that road in the future.

Commissioner Weber noted that he had asked Mike to come back. He explained to Mike that Rob stated that Mike told him that state law provides for no encroachment within 10 feet of a property boundary due to utility right-of-way. Mike said that he basically had stated that in the subdivision review process they annotate the 10 foot on either side of the property line on the subdivision plats. He had mentioned that state law is grey in this area, but it is general practice,

even with the survey profession, that they annotate these easements. He also advised that in a boundary dispute, it would probably be wise to hire an attorney and a surveyor to determine parcel lines. He also advised that a neighbor be contacted regarding an easement or purchase of an easement.

Commissioner Weber asked Joe if his opinion has changed at all, that the hill is the sight impediment. Joe stated that the hill is the main sight obstruction. Also, there are utility poles that are right at the corner of the 60-foot easement. Also, people traveling down the north ford have the right-of-way, so anyone traveling onto Travis Creek would have to give them the right-of-way before pulling out onto the road. In this case, Mr. Myers would have to give the right-of-way to people coming down. Commissioner Weber asked if a stop sign at the confluence of those two roads be appropriate. Joe stated that this depends on if this is a road or just a strip of land. If it is a strip of land, we have no right to put a stop sign there. If it is a road, if it is plotted as a road that has a 60-foot right-of-way, it would then be feasible to put one up there. It would then be considered a public road and anyone could drive up there.

The other concerns he has is that Mr. Fabian has made some efforts to get the area cleaned up of debris and weeds. He is wondering how far Mr. Myers is going to go; if he moves the buildings is he going to go after the house next. Those buildings have been there for many years. Rob still maintained that the turnout is part of the driving surface, which is why it is there. Joe stated that no one knows who built the turnouts. Commissioner Lythgoe stated that power poles, utility pedestals, etc., do not inhibit sight distance. The buildings do. As much as things being in or not being the right-of-way, it is pretty junky. If anything impedes one's ability to see what is coming down the road as it relates to him pulling out, it would be the log shed. But it looks to him also that the log shed is built right at the top of the hump. Rob stated that picture 2 shows that over the years, traffic has changed the course of the road. Commissioner Lythgoe stated that when he drove up there, his impression was that if there were buildings or obstructions closer to the road that accesses his property, it would be like having trees and bushes that you couldn't see around at an intersection. He stated that this is unsightly and it offends him, but his ability when he turns out onto the road, he doesn't see how that building being located where it is would enable him to see any better. The hump is what impedes his ability to see what is coming down the road. Rob stated that if the buildings were not there, people coming down the road would have a better chance of seeing if he is pulling out onto the road. Also, if the buildings were not there, he could then ask the road department to cut down the hump to improve sight distance.

Commissioner Weber stated that they will schedule a time for all three Commissioners to look on the ground and discuss. Everyone involved will be invited.

Matt stated that 76-3-504 (M) basically granting that easements can be defined for utilities, etc. It is not binding in any way.

DISCUSS AND DECIDE ON JUSTICE COURT'S REQUEST FOR AUTHORIZATION FOR DISPOSAL AND DESTRUCTION OF RECORDS

Debbie Rennie stated that she has gone through the official process of getting approval for the outlined items to be destroyed. She stated that the documents from old civil cases contain

confidential information, which has changed with the new reporting. Commissioner Lythgoe asked how they will be destroyed. Debbie stated that all of their records are handled by Montana Records Management, an off-site storage facility that offers certified destruction of documents. The documents are shredded. Commissioner Lythgoe asked where they are located. Debbie stated that they are located in Helena. Commissioner Lythgoe stated that he remembers that one of our legislators that had a child that got a DUI, and the record contained a social security number. During election time, people were coming in and requesting to see court records. He asked how this is handled. Debbie stated that this has become a matter of huge concern. Social Security numbers, full date of birth, minor's full names, anything deemed by the court as sealed, and items that fall under the HIPA value, such as an alcohol evaluation, are not public record. Unfortunately a lot of these records from 20 year or even 5 years ago contain that type of information. These items have to be closely guarded. Debbie stated that the Commission also needs to amend resolution 02-2004, to amend the fees for redacted copies as well as the fees for civil forms.

Commissioner Weber had a couple questions on document presented at this time. He noted that the last three items will not be destroyed until after 12/31/2008. Debbie stated that this is correct; this was a mistake on her part. Commissioner Weber asked how to proceed. Debbie stated that she would request something in writing from the Commission.

Commissioner Lythgoe moved to approve the request to destroy documents. Commissioner Weber seconded. The motion carried.

DISCUSS AND DECIDE ON REQUEST FOR FUNDS FROM THE BOULDER FIRE DEPARTMENT TO BUY TIRES

No one from the Fire Department was in attendance to present a request, and no written request had been submitted. Commissioner Lythgoe moved not to buy tires. Commissioner Weber seconded. The motion carried.

APPOINT ELECTION JUDGES AND DESIGNATE POLLING PLACES

Commissioner Lythgoe read the lists presented by the Clerk and Recorder of election judges and polling places for the upcoming elections.

Commissioner Lythgoe moved to adopt the election administrator's recommendations for polling places. Commissioner Weber seconded. The motion carried.

Commissioner Lythgoe moved to adopt the election administrator's recommendations for election judges. Commissioner Weber seconded. The motion carried.

Commissioner Lythgoe moved to adjourn. Commissioner Weber seconded. The motion carried.

MEETING ADJOURNED

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

KEN WEBER, CHAIR

TOMAS E. LYTHGOE, COMMISSIONER

CHUCK NOTBOHM, COMMISSIONER